AGNES WONG YEN HEE

v.

TANG CHEONG TIE

HIGH COURT BORNEO
ABDUL KADIR SULAIMAN JC
[ORIGINATING MOTION NO. 6 OF 1990]
16 JULY 1991

LAND LAW: *Sale and purchase agreement - Oral - Whether there was authority to sell - Was there an agreement - Caveat - Beneficial interest - Serious question to be tried - Status quo - Statute of fraud.*

Goh Kah Liu died on 27 March 1987 leaving a will dated 19 January 1987. He appointed Innocent Wong to be the executor of the will and bequeathed and devised a piece of land to the applicant ½ share and to his two minor sons ¼ share each. Innocent Wong however relinquished his assignment as executor and thereafter the applicant was appointed the administratrix/executrix.

An agreement to sell the said land was made between the respondent and Innocent Wong purported to be acting on behalf of the applicant. The purported sale and purchase agreement was an oral one only. Innocent Wong informed the respondent that he was not selling the said land to the respondent because the respondent was going to sell it at a profit and that he had found another purchaser. The respondent lodged a caveat claiming to be entitled to or to be beneficially interested in the said land pursuant to the said oral sale and purchase agreement. The respondent also filed a civil suit against the applicant claiming specific performance of the said oral sale and purchase agreement.

Held:

[1] The respondent has failed to show that the applicant had either expressly or impliedly authorised Innocent Wong to conduct the affairs relating to the said land on her behalf. In the circumstances, the applicant is not bound by the said oral sale and purchase agreement which would clothe the respondent with any interest in the said land.

[2] Notwithstanding the repeal of the Application of Laws Ordinance (Cap 2) by the Civil Law Ordinance (Extension) Order 1971, the Statute of Frauds remains applicable in Sarawak by virtue of Civil Law Act 1956.

[3] The oral sale and purchase agreement purportedly entered into between the applicant and the respondent in this application is not subject to the provisions of the Statute of Frauds and if properly entered into will be enforceable notwithstanding that it is only oral in nature.

[4] On the evidence available the respondent has failed to satisfy that her claim to an interest in the property does raise a serious question to be tried in that it was not established that the alleged oral sale and purchase agreement binds the applicant in the circumstances of this case. Therefore, she had not established her claim to be entitled to or to be beneficially interested in the said land.

[5] The respondent has failed to bring herself within the meaning of s. 173(a) of the Land Code (Cap 81) which onus lies on her as a caveator to do so. In the circumstances, the question of maintaining the *status quo* until the trial of the action by preventing the applicant from disposing of the said land to some third party does not arise.

[Application allowed with costs.]

Cases referred to:

Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 212 ***(foll)***
Lee Ah Thaw & Anor. v. Lee Chun Tek [1978] 1 MLJ 173 ***(foll)***
M.N. Guha Majumder v. R.E. Donough [1974] 2 MLJ 114 ***(foll)***
Lee Pek Choo v. Ang Guan Yau & Anor. [1975] 2 MLJ 146 ***(foll)***
Chong Ngian Shoon v. Chai Choon Moi (f) (Kuching Suit No. KG57 of 1983) ***(foll)***
Kasivisvanathan Chettiar v. Pereira [1976] 2 MLJ 110 ***(not foll)***
Macon Engineers Sdn. Bhd. v. Goh Hooi Yin [1976] 2 MLJ 53 ***(cit)***
Ong Chat Pang & Anor. v. Valliappa Chettiar [1971] 1 MLJ 224 ***(cit)***
Registrar of Titles Johore v. Temenggong Securities Ltd. [1976] 2 MLJ 44 ***(cit)***

Legislation referred to:

Application of Laws Ordinance (Sarawak)(Cap. 2)
Civil Law Act 1956 (Revised 1972), s. 3(1)
Land Code (Cap 81) (Sarawak), s. 173(a)
Law of Property Act 1925 [UK], s. 40
Rules of the High Court 1980 O. 81 r. 1(1)(a)
Rules of the Supreme Court 1957 O. 19 r. 15
Statute of Frauds 1677 [UK] s. 4

Other source referred to:

Halsbury's Law of England, 3rd Edn., Vol. 8 & 34, pp. 87 & 207, paras. 151 & 346

For the applicant - William Lau (Chambai Lindong with him); M/s. Lau & Co.
For the respondent - Stephen Chung; M/s. Stephen Chung

JUDGMENT

Abdul Kadir Sulaiman JC:

This is an application by the applicant for the removal of a caveat lodged by the respondent affecting all that one-half (½) share of the late Goh Kah Jiu in that parcel of land situate at Sungei Merah, containing an area of 1.3746 hectares, more or less, and comprised in Sibu Lease of Crown Land 48854 and now replaced by Lot 156, Block 3 Sungei Merah Town District ("the said land"). The said caveat was registered as Instrument No. L2863/1990 at the Sibu Land Registry Office on 10 April 1990 ("the said caveat").

The said Goh Kah Jiu died on 27 March 1987 leaving a will dated 19 January 1987. He appointed Innocent Wong Pak Thai ("Innocent Wong") to be the executor of the will and bequeathed and devised the said land to Agnes Wong Yen Hee (the applicant, who is also his widow) as to ½ share, Lawrence Goh Wei Ming (their son) as to ¼ share and Robin Goh Wei Tak (their son) as to the remaining ¼ share. See Exh. 'TCT 9'. On 19 November 1987 a probate was granted to Innocent Wong as executor. However, by a letter dated 1 August 1989 from Innocent Wong to the Probate Officer, Sibu in Exh. 'AW2' the former, returning the original probate dated 19 November 1987 and letters of administration dated 21 April 1989 informed the Probate Officer that he was relinquishing his assignment as executor with immediate effect for the reason stated in the letter. The reason being:

> My only reason is because of the high-handed tactics and very unreasonable demands made by Madam Agnes Wong Yen Hee one of the beneficiaries, making my job as an impartial executor practically impossible.

The fourth paragraph of 'AW2' states:

> By a copy of this letter, Madam Agnes Wong is hereby advised that she would be required to make her own arrangements with regard to the a/m matter.

From Exh. 'AW3' it is disclosed that on 15 September 1989 Innocent Wong and Agnes Wong Yen Hee, the applicant, appeared before the Probate Officer and both parties attested their signatures on the probate book whereby the applicant had willingly accepted to act as the administratrix/executrix of the estate of the deceased. By Sarawak Government *Gazette* No. 5669 dated 30 November 1989 the probate dated 19 November 1987 and letters of administration dated 21 April 1989 granted to Innocent Wong were revoked with effect from 15 September 1989 that is the day he and the applicant appeared before the Probate Officer mentioned earlier. On 27 March 1990 the letters of administration in respect of the estate of the deceased were formally granted to the applicant "to act as executrix of a will and also in trust of two minor children". See Exh. 'AW1'. At the foot of Exh. 'AW1' is stated:

> *Remarks*
>
> Probate of will granted to Innocent Wong had been revoked *vide* Gaz. No. 5669 dated 30 November 1989.

So in this application, the applicant applies for the removal of the caveat in her capacity as the administratrix of a will of the deceased.

The said land, during the lifetime of the deceased was charged to Ling Szu Hwa @ Ling Sze Hwa ("the chargee") for RM45,000 *vide* Sibu Instrument No. L4236/1986 of 18 August 1986. By a Court order dated 28 November 1989 (Exh. 'TCT2A') the said land was ordered to be sold by public auction at the instance of the chargee. By the date of the Court order, Innocent Wong was no longer the executor of the estate as the power was revoked with effect from 15 November 1989.

The original date of the auction sale was fixed on 19 January 1990 but it did not take place. It is disclosed in the evidence that Innocent Wong and Peter Ting Sieh Chung (the son of the respondent) ("Peter Ting") are also land brokers residing in Sibu, Sarawak and the applicant is resident in Singapore. According to the affidavit of Margaret Teng, an advocate with David Teng & Co. Advocates [Encl. (7)], on or about 23 March 1990 Innocent Wong telephoned and talked to her that someone was interested to buy the said land for RM130,000 and that the purchaser would have to pay not less than RM60,000 as deposit and part payment so that this amount of money could be used to redeem the said land which is subject to a charge to the chargee. On the same day, Peter Ting came to her office and said that someone was interested in purchasing the said land.

On 24 March 1990, she caused a search to be conducted at the Sibu Land Registry in respect of the said land. Initially, Peter Ting instructed her to prepare a sale and purchase agreement for parties to sign. However, subsequently Innocent Wong was against the idea as the estate needed the money as soon as possible to pay and settle the charge. If the agreement were to be prepared it has to be sent to Singapore for the applicant to sign as the vendor. Instead Innocent Wong suggested that it would be faster if a memorandum of transfer was just prepared and signed and that all moneys would be paid through her firm as stakeholders. Therefore, no sale and purchase agreement was prepared at all. However, an oral sale and purchase agreement was made between the respondent and the applicant through Innocent Wong. Pausing here for the moment, if the reason for not executing the sale and purchase agreement was because of the delay in getting the applicant to sign, how could the

memorandum of transfer be any faster? Be that as it may, the purported sale and purchase agreement remains an oral one only. Even then it was made between the respondent and Innocent Wong purported to be acting on behalf of the applicant. There is nothing in her affidavit to show the authority of Innocent Wong acting on behalf of the applicant apart from saying that the oral sale and purchase agreement was made between the respondent and the applicant through Innocent Wong when she knew that applicant was the proper authority to deal with as otherwise why the necessity to send the sale and purchase agreement to the applicant in Singapore to be signed.

She went on further to state that the terms of the oral sale and purchase agreement were, the applicant agreed to sell and the respondent agreed to purchase the said land at the purchase price of RM130,000. Upon the parties confirming the sale and purchase, the respondent had to pay RM60,000 by way of deposit and part payment to her law firm as stakeholder. Her firm was to use the said sum to pay and settle the charge owing to the chargee. The respondent was to pay the balance of the purchase of RM70,000 upon the applicant signing the memorandum of transfer. Time was to be the essence of the contract.

On 29 March 1990 Innocent Wong handed to her the original copy of the probate and a photocopy of the will of the deceased. The probate is Exh. 'MT3' which is the letters of administration dated 27 March 1990 granted to the applicant with the remark that Probate granted to Innocent Wong had been revoked *vide* Gaz. No. 5669 dated 30 November 1989 which revocation was effective from 15 September 1989. The copy of the will is 'MT4'. She said, this would enable her firm to verify the documents with the Probate Officer and confirm the name of the beneficiaries. So, by a letter dated 29 March 1990 her law firm wrote to the Probate Officer, Sibu. The letter is Exh. 'MT5'. But in that letter she informed the Probate Officer that the administratrix of the estate wished to transfer the said land to Agnes Wong, who is the applicant, Lawrence Goh Wei Ming and Robin Goh Wei Tak, who are the applicant's sons, as beneficiaries of the estate. The letter went on to state:

> Before the beneficiary transfer is accepted and in order to avoid future dispute among the beneficiaries, grateful if you would furnish to us a copy of the affidavit showing the list of the heirs/beneficiaries of the deceased or by confirming in writing all names of beneficiaries of the deceased.

To her letter there was a reply given by the Probate Officer exhibited as 'MT6'. 'MT6' states:

> Please be informed that the following persons are the beneficiaries/heirs of Thomas Goh Kah Jiu (deceased) in respect of the above quoted Probate Matter:
>
> (1) Agnes Wong Yen Hee - wife of deceased
>
> (2) Lawrence Goh Wei Ming - son
>
> (3) Robin Goh Wei Tak - son.

Her affidavit went on to state that on the same day that is 29 March 1990 Innocent Wong also handed to her the original document of title in respect of the said land for the transfer to be effected and the charge to be discharged. A copy of the title is exhibited as 'MT7'. There is no direct evidence as to how the title remained in the hand of Innocent Wong even though he had ceased to be the executor from 15 September 1989.

On 30 March 1990, both respondent and Innocent Wong confirmed the sale and purchase agreement and the respondent paid the sum of RM60,000 to her office as deposit and part payment of the purchase price in respect of the said land. Her firm issued a receipt to the respondent. See Exh. 'TCT4'.

On 31 March 1990 she proceeded to prepare the application for transmission and beneficiary transfer. Exh. 'MT8A' is the application for transmission wherein the applicant as executrix/ administratrix pursuant to the letters of administration dated 27 March 1990 applied to be registered proprietor of the said land. Exh. 'MT8B' is a memorandum of transfer citing the applicant by virtue of application for transmission as the transferor "do hereby transfer to" Agnes Wong Yen Hee, Lawrence Goh Wei Ming and Robin Goh Wei Tak (minor), the transferees, the said land in the following proportions:

> 2/8th undivided share unto the said Agnes Wong Yen Hee (f); 1/8th undivided share unto the said Lawrence Goh Wei Ming; and 1/8th undivided share unto the said Robin Goh Wei Tak.

However, both 'MT8A' and 'MT8B' were never executed.

Having prepared 'MT8A' and 'MT8B', Innocent Wong and Peter Ting instructed her to pay the RM60,000 to Messrs. Teo & Co., on behalf of the chargee. On or about 10 April 1990, Innocent Wong told her that he was thinking of not selling the said land to the respondent because the respondent was going to sell it at a profit and that Innocent Wong had found another purchaser. By this date the respondent had signed the memorandum of transfer which she had prepared. The said memorandum had not been signed by the applicant.

On or about 16 April 1990, Innocent Wong told her that they did not want to sell the said land. Pausing here again for a moment it was beyond doubt that the firm knew that at the material time the executrix/administratrix of the estate was the applicant and not Innocent Wong. Despite this knowledge, the firm was dealing directly with Innocent Wong with no clear authority from the applicant. If the applicant is to be bound by the said oral sale and purchase agreement, there must be evidence that the applicant either expressly or by necessary implication had authorised Innocent Wong to act on her behalf as executrix/administratrix of the estate.

Margaret Teng went on to state that subsequently Innocent Wong brought to her office a group of people from the St. Theresa Catholic Church and told her that he had arranged to sell the said land to the Church instead of to the respondent.

For reason best known to the parties there was no affidavit filed on behalf of Innocent Wong. There is, however, an affidavit filed on behalf of Peter Ting affirmed on 7 March 1991 [Encl. (15)]. The essence of his affidavit is that his mother the respondent had bought the said land at an agreed price of RM130,000. She had paid RM60,000 as deposit and part payment pursuant to the terms of the sale and purchase agreement. He carried out most of the negotiations on behalf of the respondent in the sale and purchase agreement. On or about 23 March 1990, he telephoned Margaret Teng to inform her of the terms of the agreement and told her to prepare a sale and purchase agreement. On or about 30 March 1990, the parties confirmed the transaction and agreed that it was not necessary to execute the sale and purchase agreement. On 30 March 1990 his mother, the respondent, paid the sum of RM60,000 to Messrs. David Teng & Co., as stakeholders. Knowing that on or about 10 March 1990 Innocent Wong had informed Margaret Teng that he was thinking of not selling the said land to the respondent because he said that the respondent was going to sell it for a profit and that he had found another purchaser, his mother the respondent asked him to talk to Innocent Wong and Agnes Wong. Worth noting at this juncture that Peter Ting gives the date as 10 March 1990 but according to Margaret Teng the date was 10 April 1990. In response to the respondent's request, he on 12 April 1990 telephoned and talked to the applicant in Singapore. The applicant, according to Peter Ting, confirmed that Innocent Wong

was acting on her behalf in respect of the sale and purchase of the said land to his mother. Exh. 'TCT7' is the copy of telephone bill for April 1990 in respect of a subscriber Ting Kok Nam of Sibu. From 'TCT7' on 12 April 1990 two calls were made to Singapore to No. 027461360, the first one for 8 min. 48 seconds at 8.19 a.m. and the second for 7 min. 28 seconds at 8.33 a.m. Peter Ting went on to say that he identified himself as Peter Ting the son of Madam Tang Cheong Tie who had bought the said land. The applicant confirmed that Innocent Wong was acting on her behalf in respect of the sale and purchase transaction and that she had left the arrangements in the hands of Innocent Wong. She said that as she was in Singapore she could not do much and would accept the advice and arrangements made by Innocent Wong. She confirmed that she has agreed through Innocent Wong to sell the said land to his mother. Subsequently, he telephoned her again as he forgot to ask her about the alleged sale to the Catholic Church. According to his affidavit, the applicant said that if she intended to sell to the Catholic Church she would pay them damages. She also told him that Innocent Wong was also negotiating that transaction on her behalf and nothing had been confirmed yet. Now, if this piece of evidence is believed then there is evidence that in respect of this oral sale and purchase agreement, Innocent Wong was acting with the authority of the applicant.

However, in the affidavit in reply of the applicant to the affidavit filed on behalf of the respondent, Margaret Teng and Wong Woan Sii, affirmed on 25 February 1991, the applicant stated that there were two telephone calls from Sibu enquiring whether the estate was for sale. The calls were made sometime in April 1990. The first caller refused to identify himself but only said that he was a broker and that he knew of a few potential buyers. She refused to discuss anything until he identified himself. She went on to say that he called again the second time and this time he identified himself as Peter. She could not recall the full content of the conversation but she remembered she was not interested in dealing with him because he was a broker.

So from the two affidavits it is reasonable to conclude that Peter Ting and the applicant did communicate over the telephone on two occasions relating to the said land and I believe that the two telephone calls were made on 12 April 1990 as evidenced by 'TCT7'. As to the substance or subject matter of the conversation I would prefer the evidence of the applicant as against that of Peter Ting as being more probable. The oral sale and purchase agreement over the said land was confirmed on 30 March 1990 between the respondent and Innocent Wong and a deposit of RM60,000 had been paid to the stakeholder. Therefore, there was no necessity for Peter Ting to telephone applicant on 12 April 1990 to hear the applicant say that she confirmed that Innocent Wong was acting on her behalf in respect of the transaction etc. as stated in his affidavit. If confirmation is needed, it should have been done during the negotiation stage before the deal was closed. The real reason for the telephone call, to my mind, was because on 10 April 1990 that is 2 days before the call, Innocent Wong had intimated to Margaret Teng his thinking of not selling the said land to the respondent because the respondent was going to sell it at a profit and that Innocent Wong had found another purchaser and from Peter Ting's affidavit he was made aware of this fact. Being a land broker himself he was in fact "fishing" from the applicant for her price in the said land. For that reason, he refused to identify himself during the first call. If he was seriously protecting the interest of his mother the respondent, the first call would have revealed his intention but instead nothing was discussed at all. It needed him to make the second call after a lapse of 14 minutes from the time of the first call which took him over 7 minutes to end the second conversation merely to make inquiry about the alleged sale to the Catholic Church. I do not believe him that the second call disclosed that the applicant was prepared to pay the

respondent damages for the breach and that Innocent Wong was also negotiating the sale to the Catholic Church on her behalf. This is because in his affidavit he says that after his mother had agreed to buy the said land Mdm. Ling of the SIB Church telephoned him and advised that SIB Church was interested in the said land provided it was free from all encumbrances. So he told Mdm. Ling he would arrange to buy the land, arrange to discharge the encumbrances and then sell the land to the SIB Church. So now that Innocent Wong had decided not to proceed with the oral sale and purchase agreement he would want to be a broker in respect of the intended sale to the Church. For that he received the reply from the applicant during the second telephone call that she was not interested in dealing with him because he was a broker. So to that extent it has not been established that in the oral sale and purchase transaction involving the respondent, the applicant had given authority to Innocent Wong to transact on her behalf. Peter Ting admitted that he negotiated and agreed with Innocent Wong to purchase the said land on behalf of the respondent even subsequently having knowledge that one of the beneficiaries, Robin Goh Wei Tak was a minor. He knew of the intention of SIB Church to purchase land as early as December 1989. He came to know of the fact that the said land was advertised for auction. So he arranged for members of the SIB Church to view the said land. After viewing, he was told that they would inform him of their decision in due course of time. Subsequently, he met Innocent Wong who told him that the latter was trying to sell the said land to raise money to settle the loan so that the land would not be auctioned. After talking to Innocent Wong, he persuaded the respondent to buy the said land. His intention is no other than to make profit out of the said land as he told Mdm. Ling from the Church that he would arrange to buy the land, arrange to discharge the encumbrances and then sell the land to the SIB Church. As a land broker, that is his business but to bind the applicant over his dealing with Innocent Wong is another matter altogether. He admitted in his affidavit that Mdm. Ling told him that she would give a cheque for RM20,000 as security and he was not to cash the cheque unless and until he could sell and transfer the said land to SIB Church free from all encumbrances. In the event that he could not arrange to sell to SIB Church he was to return the cheque to her. Now that Innocent Wong had indicated that he would not proceed with the oral agreement, he had no longer the ability to sell the said land to the Church as promised. As agreed he had to part with the cheque of RM20,000 given to him as security. Even though according to Margaret Teng, Innocent Wong indicated his intention on or about 10 April 1990 but this intention would have come to the knowledge of Peter Ting before that date for on 9 April 1990 at 3.00 p.m. the respondent affirmed a statutory declaration laying the groundwork for the lodgment of the said caveat on the same day which was registered at the Sibu Land Registry Office the following day that is 10 April 1990 claiming to be entitled to or to be beneficially interested in the said land pursuant to the said oral sale and purchase agreement, thereby freezing the transaction until the removal of the caveat.

The applicant filed this application for the removal of the said caveat on 17 November 1990 and on 29 November 1990 the respondent issued a writ against the applicant in Suit No. 54 of 1990 at High Court, Sibu claiming specific performance of the said oral sale and purchase agreement in relation to the said land. It can be said to be a coincidence but it is too much of a coincidence again after the first coincidence of lodging a caveat to achieve the purpose of Peter Ting selling the said land to SIB Church.

It is never lost sight of that the caveator and the plaintiff in Suit No. 54 of 1990 is the respondent and Peter Ting is a land broker. But Peter Ting is respondent's son. It was never the intention of the respondent to purchase the said land. This is evident from the affidavit

of Peter Ting himself [Encl. (15)]. He carried out most of the negotiations on behalf of his mother in this sale and purchase transaction. He made two telephone calls to applicant as mentioned earlier. All dealings with Innocent Wong and Margaret Teng, the advocate, were done by him. He confirmed the sale with Innocent Wong. According to his affidavit the whole scheme started in December 1989 during a Christmas procession in Sibu organised jointly by the different churches in Sibu. During the procession, he met Mr. Yew Kwang Yu, a member of SIB Church who knew that he was a land broker. He was asked to look for a parcel of land near to the airport. He was introduced to Pastor Ting of SIB Church. After the procession, he had a brief meeting at Pastor Ting's house. Also present were Mr. Yew and Mdm. Ling Pik Kiik. He arranged for members of the SIB Church to view two pieces of land, one of which was the said land which he came to know from the newspaper that they were to be auctioned. He brought Pastor Ting to view the land in the presence of Mdm. Ling and her husband. They told him they would inform him of their decision in due course of time. At this point of time, his mother, the respondent was not in the picture yet. Subsequent to this while at Borneo United Sawmill Sdn. Bhd., he met Innocent Wong who told him that he was trying to sell the said land to raise money to settle the loans so that the land would not be auctioned. After talking to Innocent Wong, he persuaded his mother to buy the said land. At this juncture, it should not be forgotten that he was waiting for the decision of the SIB as to whether or not to buy the said land. While so waiting, he persuaded his mother the respondent to buy the said land. Hence, the oral sale and purchase agreement.

According to Margaret Teng in her affidavit [Encl. (7)] on or about 23 March 1990 Innocent Wong telephoned her and Peter Ting came to see her in her office to say that someone was interested in purchasing the said land. Innocent Wong told her the purchase price of RM130,000 and deposit and part payment of not less than RM60,000. This someone from the evidence is the respondent whom Peter Ting has persuaded to buy. While this was taking place, Peter Ting says in his affidavit at para. 13:

> After my mother has agreed to buy the ½ share (the said land), Madam Ling of the SIB Church telephoned me and advised that SIB Church was interested in that very parcel of land. She said the Church would only buy the land if it was free from all encumbrances. I told her I would arrange to buy the land, arrange to discharge the encumbrances and then **sell** the land to the SIB Church.
>
> (Emphasis is mine)

So, the motive of Peter Ting is very clear, after all he is a known land broker. He was trying to make a profit from the sale to SIB Church. He is able to do this by persuading his mother to buy the land. For that reason, there is evidence to be found in the affidavit of Margaret Teng [Encl. (7)] at para. 11 that on or about 10 April 1990 Innocent Wong told her that he was thinking of not selling the said land to the respondent because he said the respondent was going to sell it at a profit and that Innocent Wong had found another buyer.

Turning back to the evidence of Peter Ting, after laying down his condition with Mdm. Ling of the SIB Church, the latter told him that she would give a cheque for RM20,000 as security and he was not going to cash the cheque unless and until he could sell and transfer the said land to SIB Church free from all encumbrances. In the event he could not arrange to sell the said land to SIB Church, he was to return the cheque of RM20,000 to her. A land broker expecting to reap a profit from the transaction will naturally try to do what is possible to achieve his ends.

While this is happening on the side of Peter Ting, we have the evidence of Margaret Teng that on or about 16 April 1990 Innocent Wong told her that they did not want to sell the

said land to the respondent. Subsequently, Innocent Wong brought a group of people from the St. Theresa Catholic Church to her office. Innocent Wong told her he had arranged to sell the said land to the Church instead of to the respondent. So the game here is between Innocent Wong and Peter Ting. They made use of the applicant and respondent as fronts. From his conduct in the game Innocent Wong is another land broker. He took the advantage of his presence in Sibu where the said land is, as against the applicant in Singapore and of the fact that he was the executor of the estate before 15 September 1989 which fact was gazetted only on 30 November 1989 and also in possession of the original document of title in respect of the said land. See Margaret Teng's affidavit at para. 7. To lend support to my view on the matter, I now turn to the affidavit of Liong Ung Kwong [Encl. (12)]. He is the Chairman of the Church Committee of SIB Foochow Church, Sibu ("the Church"). On or about January 1990, the Church was aware that the said land was to be put up for auction. The Church was very interested to buy the said land and he was designated to inquire into and negotiate the sale. At that time the Church was not aware of the reserved price of the said land.

He instructed Mdm. Ling Pik Kiik to be in touch with the relevant person. Mdm. Ling told him that she was in contact with Peter Ting, a broker, who wanted the said land sold for RM170,000. The Church was willing to buy at that price. Lest it be forgotten, the agreed price with the respondent was only RM130,000. So, a profit of RM40,000 to Peter Ting. The Church was aware that the land was subject to a few legal charges. However, Peter Ting assured that everything will be in order and the said matter should be left entirely in his hand. For two months (this must be March 1990 or so) Peter Ting failed to make any headway in arranging for the sale. From the evidence this must be so because by this time the said land could not yet be transferred to the respondent and by 10 April 1990 Innocent Wong decided that the deal with the respondent was off, hence the caveat. By this time the Church came to know that the reserved price for the said land was only RM120,000. Then towards the end of March 1990 the deponent decided to approach Innocent Wong whom he knew to be the former executor of the estate and also the brother of the applicant. But before he had a chance to approach Innocent Wong, Peter Ting came to see him at his house with one Mr. Tan whom Peter Ting claimed to be a creditor of the deceased. Pastor Ting was also present at the meeting. Peter Ting kept insisting that there was no need for the Church to approach Innocent Wong and was also told that negotiation with Innocent Wong had broken down. This piece of information, in my view, is no other than to prevent direct sale to the Church of the said land by Innocent Wong. For the next few days, Peter Ting kept insisting that the deponent should not go and see Innocent Wong. At all times, Peter Ting did not mention about his mother, the respondent being interested in buying the said land and neither was his mother ever been brought into the discussions. The Church later bought the adjoining ½ share of the said land.

As to the evidence that the respondent was used as a front, various affidavits and her own affidavit [Encl. (6)] clearly show that she played a small role compared to that of her son, Peter Ting, in this land dealing. On 30 March 1990, she paid the sum of RM60,000 being deposit and part payment. She also signed the memorandum of transfer prepared by Margaret Teng as a transferee as evidenced by 'TCT3B' and subsequently she lodged a caveat to protect her interest in the said land and issued a writ, Sibu High Court Suit No. 54 of 1990 against the applicant.

As to the evidence that the applicant was used as a front, various affidavits and her own affidavits [Encl. (2) and (11)] clearly show that she was the executrix of a will of the deceased

pursuant to letters of administration dated 27 March 1990 though she was in fact acting as such from 15 September 1989 as evidenced by 'AW3'. She said she never authorised any person or Innocent Wong to deal or enter into arrangements with any other person for the sale of the said land. The respondent never did speak to or come into contact with her. She has never met the respondent and never spoke about any contract. She admitted receiving two telephone calls from Sibu in April 1990 inquiring whether the estate's property was for sale. The first caller refused to identify himself but only said that he was a broker and that he knew of a few potential buyers. She refused to discuss anything until he identified himself. He called again and this time he identified himself as Peter. Though she could not recall the full content of the conversation but she remembered she was not interested in dealing with him because he was a broker. To her, it is unforeseeable and impossible for her to have authorised Innocent Wong to act on her behalf for the reason that, *inter alia*, the relationship between Innocent Wong and herself has turned sour. It was because of their strained relationship that Innocent Wong decided to relinquish his office as executor. Margaret Teng never did once clarify or check with her whether she had the intention to sell.

Going back to the affidavit of Peter Ting, after the applicant through Innocent Wong refused to complete the sale and purchase to the respondent, he told Mdm. Ling of that fact. He then met Liong Ung Kwong in his office in April 1990. Liong asked him to arrange for him to see Innocent Wong. At the meeting at Liong's office, it was also discussed that if SIB Church were to purchase the said land from the estate directly instead of through him then SIB Church would compensate him in the sum of RM20,000.This appears to be sensible because earlier on Mdm. Ling was prepared to give RM20,000 security to him on condition that the land is sold to the Church free from all encumbrances. So for so long as the land is sold to the Church by whatever arrangement the RM20,000 cheque given by Mdm. Ling could be cashed by him. But the difference lies in this, if the land is sold direct by the estate, Peter Ting will lose the prospect of selling it for RM170,000 which, according to Liong Ung Kwong, the Church was prepared to pay as the price for the land. The price was quoted by Peter Ting. So the caveat and the High Court Suit in that sense are still important to Peter Ting. The caveat will prohibit dealings by the estate and if the suit is won, the land will be transferred to his mother and a sale of that land could be arranged with the Church at the agreed price of RM170,000.

So much is the background leading to the application before me now. In the nature of this application, it is settled law that the onus is on the caveator that is the respondent in this case, to satisfy the Court two things. She must first satisfy the Court that on the evidence presented to it her claim to an interest in the said land does raise a serious question to be tried; and having done so, she must go on to show that on the balance of convenience it would be better to maintain the *status quo* until the trial of the action, by preventing the estate from disposing of the said land to some third party: *Eng Mee Yong & Ors. v. Letchumanan* [1979] 2 MLJ 212.

For the respondent, the learned Counsel tendered a written submission coupled with an oral one. The learned Counsel said that the negotiation between the parties began on or before 23 March 1990. The applicant only became executrix on 27 March 1990. After she became executrix, Innocent Wong continued to represent and act on her behalf in the transaction. Before 27 March 1990, Innocent Wong was the executor and trustee of the will of the deceased. He is the brother of the applicant and brother-in-law of the deceased. But this line of argument has no merit at all short of authority either express or implied given by the applicant to Innocent Wong for, according to 'AW2' and 'AW3', Innocent Wong knew that

he was no longer the executor as on 23 March 1990. Margaret Teng, the advocate, ought to know this fact as well. There is nothing in the evidence that anyone with authority to bind the applicant had held out that Innocent Wong had authority to act on behalf of the applicant. For Peter Ting who negotiated for his mother in the transaction knew from the advertisement in the newspaper of the intended auction of the said land. From para. 5 of his mother's affidavit which he affirmed the fact stated therein he knew that he was dealing with land which belonged to the estate of the deceased. Therefore, before embarking on the negotiation with Innocent Wong prudence dictates that he must first ascertain with whom he was dealing with. He must satisfy himself that the person selling the land must have the authority to do so either expressed or implied. This, he has failed to do so. His failure must be imputed upon the respondent. Worse of all is Margaret Teng who handled the transaction for the parties. She knew that she was handling matters related to estate of the deceased. On 29 March 1990, she was handed by Innocent Wong the original copy of 'MT3' which is the letters of administration granted to the applicant with the remark that Innocent Wong's probate had been revoked and yet she went on handling the matter between Innocent Wong and the respondent through Peter Ting without even interest to look for authority for Innocent Wong to act. In the circumstances, it is absurd to hold the applicant responsible for what Innocent Wong has done. Counsel says from 'AW3', letters of administration has not yet been granted to the applicant and so until her appointment on 27 March 1990 Innocent Wong remained the executor but learned Counsel has failed to see that from 'AW3' it is stated that on 15 September 1989 both the applicant and Innocent Wong attested their signatures on the probate book whereby the applicant had willingly accepted to act as the administratrix/ executrix. The principle of ostensible authority cannot be applied when on 29 March 1990 Margaret Teng became aware of letters of administration issued to the applicant. As a legal adviser it is incumbent upon her to search for the authority for which Innocent Wong acted. Learned Counsel then tried to suggest that Innocent Wong had the authority of the applicant as in the dealing with the Bishop of Sibu, Innocent Wong was the guarantor to the Bishop in the transaction. Counsel was referring to 'TCT11' which is a sale and purchase agreement entered into between the applicant as vendor and the Bishop of Sibu as purchaser dated 20 April 1990 in respect of the said land. Innocent Wong did not file any affidavit in this application. The Bishop of Sibu also did not file any affidavit. Liong Ung Kwong, the Chairman of the Church Building's Committee merely said sometime towards the end of March 1990 he decided to approach Innocent Wong who was the former executor of the estate of the deceased and also the brother of the applicant and he was aware that the consent of the applicant was required for the sale. But before he had a chance to approach Innocent Wong, Peter Ting on several occasions prevented him from doing so. So, there is no evidence adduced through Liong Ung Kwong that this transaction with the Bishop of Sibu involved the participation of Innocent Wong. The respondent in her affidavit said the applicant wrongfully sold the said land to the Bishop of Sibu on behalf of St. Theresa Catholic Church for RM170,000. Innocent Wong also negotiated and acted on behalf of the applicant as she was at all material times in Singapore. That was her reason for saying that Innocent Wong negotiated and acted on behalf of the applicant. Margaret Teng in her affidavit said that subsequently after 16 April 1990 Innocent Wong brought a group of people from St. Theresa Catholic Church to her office. Innocent Wong told her that he had arranged to sell the said land to the Church instead of to the respondent. She told them the respondent had already paid RM60,000 as deposit and part payment pursuant to their oral agreement. Then she went on to say:

> I was advised and verily believe that a sale and purchase agreement was subsequently prepared at Messrs. Lau & Co. to sell the said land to St. Theresa Church. This transaction was arranged by Innocent Wong on behalf of the estate of Goh Kah Jiu.

The pertinent question to ask is, if the transaction was arranged by Innocent Wong, why Margaret Teng did not prepare the sale and purchase agreement but instead she was advised and verily believe (which turns up to be a fact) that the agreement was prepared by Messrs. Lau & Co. The answer was simple because she told them in the presence of Innocent Wong that the respondent had already paid RM60,000 as deposit and part payment and so she was not prepared to prepare one for them. So they had to go elsewhere to have the document prepared. There was no evidence that the agreement prepared at Messrs. Lau & Co., was at the instance of Innocent Wong. No one from Messrs. Lau & Co. filed any affidavit on the matter. What Margaret Teng could say was merely that she was advised and verily believed that it was so. The source is not known. Wong Woan Sii, formerly of Messrs. Teo & Co. Advocates, in her affidavit [Encl. (8)] said prior to 30 March 1990 Innocent Wong came to her office with Peter Ting. It was in relation to the intended sale of the said land to the respondent. There was nothing in her affidavit suggesting the involvement of Innocent Wong with the sale of the said land to the Bishop of Sibu. There was also nothing in the affidavit of Peter Ting to suggest such an involvement. However, to the sale and purchase agreement between the applicant and the Bishop of Sibu was appended a guarantee executed by Innocent Wong. He guarantees the due performance of the contract by the applicant. If the applicant fails, then he would indemnify the Bishop against all losses, damages, costs and expenses or otherwise which may be incurred by the Bishop by reason of default of the applicant in performing and observing the contract. It is not known how it came about that such guarantee be given by Innocent Wong. Clause 4 of the said agreement states:

> 4. It is understood that the said share (the said land) is the subject of a caveat *vide* Sibu Instrument No. L2865/90 dated 10 April 1990 (the said caveat of the respondent) in respect of which the Vendor (the applicant) undertakes to apply for its removal at her own cost.

Bearing in mind that what the Church wanted was land free of all encumbrances, the said caveat must be removed. The caveat was the doing of Innocent Wong entering into the oral agreement with the respondent through Peter Ting without the authority of the applicant. The applicant in her affidavit affirmed on 25 February 1991 at para. 3 deposed:

> 3. The said Innocent Wong was the executor of my late husband's estate until 15 September 1989. A copy of the notification to this effect published in the Sarawak Government Gazette dated 30 November 1989 is hereby produced ... I have been informed by the said Innocent Wong, and do verily believe, that he did notify both Messrs. Teng & Co. and Messrs. Teo & Co. of the revocation of his executorship and that he has no authority to act for me.

So in that light Innocent Wong had to guarantee the performance of the contract and if the caveat is not removed and the Bishop does not get the land free of encumbrances, Innocent Wong guarantees to bear the responsibilities. So because of the guarantee *per se* it cannot be concluded that Innocent Wong was involved in the transaction between the applicant and the Bishop in the sense of directly negotiating the deal on behalf of the applicant.

The learned Counsel for the respondent also submitted that if Innocent Wong was not acting for Agnes Wong, why must he give Exh. 'MT3', Exh. 'MT4' and Exh. 'MT7' that is, the letters of administration given to the applicant dated 27 March 1990, the photocopy of the will of the deceased and original document of title respectively to Margaret Teng. In the light of the denial by the applicant of authority given by her to Innocent Wong and the onus is on the respondent in such a matter as this the failure of Innocent Wong to depose any affidavit in this matter, left the respondent with no evidence to support the allegation.

The mere fact of possession of 'MT3' and 'MT7' in the light of the denial of giving any authority to Innocent Wong do not absolve Margaret Teng as an advocate of satisfying herself that Innocent Wong in fact had the authority to act on behalf of the applicant. Without doing anything more, she was doing it at her own risk. As to 'MT4', it was only a photocopy of the Will handed by Innocent Wong to Margaret Teng. As Innocent Wong was the first executor he had access to the original Will on the death of the deceased. In 'TCT5' Margaret Teng wrote to Messrs. Teo & Co., Advocates saying that she was acting for and on behalf of the applicant. It is for Margaret Teng to explain why she said so but her affidavit failed to explain this point. The Court cannot infer authority to act on behalf of the applicant being given to Innocent Wong just because Margaret Teng chooses to say so in 'TCT5'.

The learned Counsel for the respondent went further to say that the applicant stated that she could not have entered into the alleged sale and purchase agreement with the respondent because one of her sons Robin Goh was a minor and no dealings could have bound him. But on the other hand, the applicant very conveniently forgot that her son Robin was a minor when she entered into the sale and purchase agreement with the Bishop of Sibu. This was submitted in the context of para. 9 of the applicant's affidavit [Encl. (11)] as follows:

> 9. I have been advised by my Counsel and verily believe that the beneficiary interest of a minor could not be transferred unless with the sanction of the Court. One of the beneficiaries of the one-half share in the land is my son, Robin Goh Wei Tak who is a minor, born on 31 March 1973. Margaret Teng was fully aware of this fact and being an advocate and solicitor, she ought to be fully aware that any sale involving a minor's interest in land is invalid unless with the sanction of the Court. I crave leave to refer to para. 7, Exhibits "MT3" and "MT4" of Margaret's Affidavit which showed conclusively that she was aware of the minor's interest. Margaret's Affidavit glaringly failed to highlight this point.

On that statement by the applicant alone, I am not prepared to hold that the applicant was not telling the truth when she said Innocent Wong acted without her authority. While the agreement with the Bishop of Sibu is a separate issue altogether and not the subject-matter of this application, what the applicant deposed in that paragraph of her affidavit was what have been advised by her Counsel and which she verily believed. If after being so advised and so verily believe she still chooses to enter into the agreement with the Bishop of Sibu, the dispute if any would be between her and the Bishop. But for doing so in the agreement with the Bishop, she cannot be inferred to have given the authority to act to Innocent Wong in respect of the oral sale and purchase agreement with the respondent. This is a separate issue altogether. The Court must be satisfied that Innocent Wong in fact acted on behalf of the applicant so as to bind her with the oral sale and purchase agreement.

Citing *Lee Ah Thaw & Anor. v. Lee Chun Tek* [1978] 1 MLJ 173 the learned Counsel submitted that the said oral sale and purchase agreement entered into with the respondent was made by the applicant as executrix of the estate of the deceased. It was not made between the minor son of the applicant and the respondent as at the material time the administration of the estate was incomplete. The administration was granted to the executrix of a will and also in trust for the children, and he went on to submit that at the material time the minor did not have an interest in the parcel of land. Applicant could sell the land to the respondent. In my view *Lee Ah Thaw's* case does not assist the respondent in any way. In the first place, the case in question relates to the residuary beneficiary claiming to have the caveatable interest. The Federal Court held that a residuary beneficiary until the residue of the estate has been ascertained, was not entitled to or beneficially interested in the land

because the residue has not been ascertained. In this case the minor's share is ascertained and therefore he is not a residuary beneficiary and the person claiming an interest or entitlement to the said land is the respondent and not the minor. So the case quoted is not in point. Secondly, as the administration in this case is not complete any dealing by the applicant as an administratrix in respect of the share of the minor is a dealing by the applicant as a trustee for the minor. Therefore, to say that the minor did not have an interest in the said land is not at all correct. Thirdly, the issue in this application is whether the applicant is bound by the oral sale and purchase agreement so as to make the respondent entitled to or to be beneficially interested in the said land by virtue of that agreement so as to clothe her with caveatable interest. The applicant will be bound only if the said agreement was entered with her or through someone else with her authority or consent. It might well be that the estate was at the material time encumbered with burdensome debt, so much so that the executrix was constrained to dispose of the said land in order to realise the necessary fund to not only liquidate the liabilities of the estate but also to complete the execution of the estate but it is for the respondent to provide the Court with evidence that the applicant is bound by the oral sale and purchase agreement worked out by Innocent Wong with Peter Ting on behalf of the respondent.

Having considered all the evidence before the Court and the submissions by both parties as regard the authority of Innocent Wong to act, I am satisfied that the respondent has failed to show that the applicant had either expressly or impliedly authorised Innocent Wong to conduct the affairs relating to the said land on her behalf. In the circumstances, the applicant is not bound by the said oral sale and purchase agreement which would clothe the respondent with any interest in the said land.

Since the alleged sale and purchase agreement is oral in nature, the learned Counsel for the applicant submitted that such oral agreement is caught by the provisions of the Statute of Frauds which to him is a statute of general application in Sarawak. He cited the case of *M.N. Guha Majumder v. R.E. Donough* [1974] 2 MLJ 114. In that case B.T.H Lee J said at p. 117:

> Even if it be assumed in favour of the plaintiff that what was alleged by him is true, the oral contract is unenforceable in law for failure to conform with the provisions of the Statute of Frauds. (See *Halsbury's Laws of England*, 3rd Edn., Vol. 34, p. 207 para. 346 and Vol. 8, p. 87 para. 151).

The learned Counsel for the applicant further cited the case of *Lee Phek Choo v. Ang Guan Yau & Anor*. [1975] 2 MLJ 146 FC in support that the Statute of Frauds is applicable in Sarawak. Lee Hun Hoe CJ (Borneo) in that case at p. 147 has this to say:

> In respect of land the declaration of trust must be manifested by some writing in compliance with the Statute of Frauds if it is applicable as it is in Sarawak.

Earlier, on the same page, His Lordship said:

> In this case there is no writing at all to indicate any declaration of trust. The only documents are the memoranda of transfer, but they in no way indicate any such declaration.

The Statute of Frauds is applicable to Sarawak by virtue of s. 2 of the Application of Laws Ordinance (Cap. 2). However, the case of *Lee Phek Choo, supra*, is not in point in this application as the issue before the Federal Court in that case was whether there was a trust or not whereas that issue is not in question in this application. In the circumstances, the case is distinguishable. As regards the case of *M.N. Guha Majumder supra*, I will deal with it later in the course of the judgment.

By Civil Law Ordinance (Extension) Order 1971, the Application of Laws Ordinance (Cap. 2) was wholly repealed so far as it relates to any matter in the Federal List, and the Civil Law Ordinance 1956 as so modified by First Schedule to the 1971 Order, was extended to Sarawak with effect from 1 April 1972. In the result, with effect from the same date, s. 3(1)(c) of the Ordinance, which is now known as Civil Law Act, 1956 (Revised 1972) (Act 67) reads as follows:

> 3(1) Save as far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall:
>
> (a) ...
>
> (b) ...
>
> (c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 12 December 1949, subject however to subsection (3)(ii):
>
> Provided always that the said common law, rules of equity and statutes of general application shall be applied so far as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

So notwithstanding the repeal of the Application of Laws Ordinance (Cap. 2) by the Civil Law Ordinance (Extension) Order 1971, the Statute of Frauds remains applicable in Sarawak by virtue of Civil Law Act 1956. According to *Chong Ngian Shoon v. Chai Choon Moi (f)* in Kuching - Suit No. KG57 of 1983, s. 4 of the English Statute of Frauds (1677) as amended by the Law Reform (Enforcement of Contracts) Act 1954 applies in Sarawak by operation of the Civil Law Act 1956 and this requires the execution of a memorandum or note in writing for contract of guarantee only. Section 40 of the Law of Property Act 1925 is not included in the second schedule to the Civil Law Act 1956 nor is it applicable to Sarawak under s. 3(1) of, the Civil Law Act 1956 because it deals with subjects which are also covered under our Land Code and Contracts Act 1950. So in the light of the decision in *Chong Ngian Shoon, supra,* the oral sale and purchase agreement purportedly entered into between the applicant and the respondent in this application is not subject to the provisions of the Statute of Frauds and if properly entered into will be enforceable notwithstanding that it is only oral in nature.

Having dealt with that, I will now come to consider the decision in *M.N. Guha Majumder, supra*. In saying that the oral contract in that case is unenforceable in law for failure to conform with the provisions of the Statute of Frauds, His Lordship refers to *Halsbury's Laws of England,* 3rd Edn., Vol. 34, p. 207 para. 346 and Vol. 8, p. 87 para. 151.

Halsbury's Laws of England, 3rd Edn., Vol. 34 p. 207 para. 346 states that no action may be brought upon any contract for the sale or other disposition of land or any interest in land **unless the agreement upon which such action is brought or some memorandum or note thereof is in writing** (the emphasis is mine). In relation to the emphasised part, there is a footnote by the author. The footnote relates to Law of Property Act 1925. As mentioned earlier, the Law of Property Act 1925 is not included in the second schedule to the Civil Law Act 1956 being one of the Acts of Parliament of the United Kingdom which continue in force in Sarawak nor is it applicable to Sarawak under s. 3(1) of the 1956 Act because it deals with subjects which are also covered under our Land Code and Contracts Act 1950.

Halsbury's Laws of England, 3rd Edn., Vol. 8, p. 87 para. 151 in relation to a contract for the sale or other disposition of land or any interest in land also recited the Law of Property Act, 1925. For the same reason the 1925 Act is not applicable in Sarawak.

In any event the statement of His Lordship is obiter as the evidence as found in the case was that the parties did not intend to be immediately bound. They had not the necessary *animus contrahendi*. What passed was only a negotiation from beginning to end. The decision in that case was also based on O. 19 r. 15 of the Rules of the Supreme Court 1957 which was replaced by the Rules of the High Court 1980. The 1980 Rules does not expressly refer to nor does it provide for the application of the Statute of Frauds in Sarawak. In fact O. 81 r. 1(1)(a) specifically provides for summary judgment application on a writ of summons indorsed with a claim for specific performance of an agreement (whether in writing or not) for the sale, purchase or exchange of any property, which includes land. So to that extent the case cited is no longer of relevance to this proceeding.

The learned Counsel for the respondent further submitted that in fact the respondent had issued Writ of Summons No. 54 of 1990 and therefore, she does not have to prove she has a good claim to a registrable interest in the said land when the applicant applied to have the caveat removed, but only when the suit comes to trial. He cited *Kasivisvanathan Chettiar v. Pereira* [1976] 2 MLJ 110 FC as the authority for that. In my view, that case is different from the one before me now. In that case the respondent caveator was in possession of the land. The appellant, the registered owner wanted to get him out of the land. The respondent says he had bought the land and was permitted to build the house on it but the appellant says that he was only a tenant. So in that case there was a real dispute between the parties regarding the land. The respondent caveator had filed a suit against the appellant and therefore it was desirable that the *status quo* be preserved pending the disposal of the suit. But in this matter before me the respondent merely wants to enforce the alleged oral and sale agreement against the executrix of the estate of the deceased which on the evidence available she has failed to satisfy me that her claim to an interest in the property does raise a serious question to be tried in that it was not established that the alleged oral sale and purchase agreement binds the applicant in the circumstances of this case. Therefore, she had not established her claim to be entitled to or to be beneficially interested in the said land.

The learned Counsel further argues that the respondent as a purchaser of the said land having paid RM60,000 as part payment and deposit would have acquired a caveatable interest in the said land. He cited three cases as authorities for the proposition. They are *Macon Engineers Sdn. Bhd. v. Goh Hooi Yin* [1976] 2 MLJ 53, *Ong Chat Pang & Anor. v. Valliappa Chettiar* [1971] 1 MLJ 224 and *Registrar of Titles, Johore v. Temenggong Securities Ltd.* [1976] 2 MLJ 44. This proposition is devoid of merit for, in all those cases there was in existence a valid sale and purchase agreement but in this case it was entirely on a different footing. From the evidence available, I am not satisfied that there was a valid sale and purchase agreement which would bind the applicant as the vendor.

In this case I am not satisfied that there was even any oral agreement on the part of the applicant to transfer the said land to the respondent. Any agreement, if any, was between Innocent Wong, the previous executor of the estate entered into with the respondent which cannot bind the applicant who had given no authority either express or implied to Innocent Wong to act on her behalf. On the evidence presented, I am not satisfied that the respondent's claim to an interest in the said land does serious question to be tried. Echoing what was said by Lee Hun Hoe CJ (Borneo) in *Lee Ah Thaw & Anor. v. Lee Chun Tek, supra*, at p. 177, the respondent in this application had merely shown that the lodging and continued existence of the said caveat would be advantageous to her pending the Sibu High Court Suit No. 54 of 1990 which in substance is the same as what is contained in the evidence in opposition to this application by the applicant to remove the said caveat or else the

applicant will transfer the said land to the Bishop, thereby causing not only irreparable damage and loss to the respondent, it would also pre-empt and frustrate the respondent's claim for specific performance in Suit No. 54 of 1990. But in this application by the applicant, the respondent has failed to bring herself within the meaning of s. 173(a) of the Land Code (Cap. 81) which onus lies on her as a caveator to do so. In the circumstances, the question of maintaining the *status quo* until the trial of the action by preventing the applicant from disposing of the said land to some third party does not arise.

The application is allowed and I order that the said caveat registered as Instrument No. L2863/1990 at the Sibu Land Registry Office on 10 April 1990 against the said land lodged by the respondent be forthwith removed from the Land Register. Costs to the applicant to be taxed.

Also found at [1992] 3 CLJ 1393